18726

No. [redacted]

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

CHARLES THOMAS YEAMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF.

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TABLE OF AUTHORITIES CITED

No. 63-66-S Civil

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APPELLEE'S BRIEF.

I.

Statement of the Pleadings and Facts Disclosing Jurisdiction.

On August 9, 1961, the Federal Grand Jury for the Southern District of California, Central Division, returned a One-Count Indictment charging that the appellant, Charles Thomas Yeaman, on or about June 23, 1960, unlawfully transported in interstate commerce from Las Vegas, Nevada, to Los Angeles, California, a stolen 1960 Chevrolet in violation of Section 2312 of the Title 18, United States Code.

On December 11, 1961, the appellant appeared before the Honorable Harry C. Westover in United States District Court, Southern District of California, and pleaded guilty to the indictment. David Kenyon, a member of the Federal Indigent Panel, was appointed to represent the appellant in the District Court proceedings.

On January 2, 1962, the appellant again appeared before the Honorable Harry C. Westover and was committed to the custody of the Attorney General for five years.

On January 21, 1963, the appellant filed an "Application for a Writ of Habeas Corpus" with the District Court. On January 30, 1963, the Honorable Albert Lee Stephens, Jr., denied the relief sought by the appellant.

On June 6, 1963, the appellant filed a notice of appeal *nunc pro tunc* February 27, 1963.

The jurisdiction of the District Court is based on Section 2312 of Title 18, and Section 2241 of Title 28, United States Code. The appeal is taken to this Court pursuant to Title 28, United States Code, Section 1291.

II.

Statutes Involved.

The Sixth Amendment of the Constitution provides:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

18 United States Code, Section 2312 provides:

"Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

28 United States Code, Section 2241, provides in part:

"(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

"(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the applicant on for hearing and determination to the district court having jurisdiction to entertain it.

"(c) The writ of habeas corpus shall not extend to a prisoner unless—

"(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

"(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

"(3) He is in custody in violation of the Constitution or laws or treaties of the United States; . . ."

III.

Questions Presented.

The appellant, proceeding *in propria persona,* apparently raises three questions in his "brief."

(1) Did the District Court err in denying the petition for a Writ of Habeas Corpus, a petition based on a claim of lack of speedy trial?

(2) Did the District Court err in denying the petition for a Writ of Habeas Corpus, a petition based on the sentencing court's failure to run the instant Federal sentence concurrently with a previously imposed State sentence?

(3) Did the District Court violate its discretion in denying the appellant's petition without holding a hearing in his presence?

The Government is cognizant of the fact that the appellant's "Brief" is not in concord with the rules of this court and the government also recognizes that this Honorable Court might wish to dismiss the appeal for that reason. In view of the fact, however, that the appellant is proceeding *in propria persona* and *in forma pauperis,* the government has replied to the pleading.

IV.

Statement of the Case.

Since the petition for the Writ of Habeas Corpus did not sufficiently set for the relevant facts, the District Court made the necessary thorough search of the original case file prior to ruling on the petition, as the order denying the petition states. [C. T. 4.][1]

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[1]C. T. refers to Clerk's Transcript of Record.

The order notes the dates of indictment, plea, and sentencing, as previously stated, and goes on to state that the files of the Superior Court of the State of California indicate that the appellant was sentenced by the court on September 16, 1960, to six months to fourteen years imprisonment for violation of California Penal Code, Section 470, and was released on parole from the State penitentiary on November 28, 1961. [C. T. 4.]

The court concluded that since appellant was indicted within the period allowed by the Statute of Limitations, since he made no effort to speed his trial, nor to raise an objection based on the grounds of lack of speedy trial, and since he had not made a showing of prejudice, his claim to relief on this ground should be denied. [C. T. 5.]

The District Court stated that the appellant's request that the time he served in State prison should be applied to his Federal sentence was considered by the court as a motion for modification of sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure.

The District Court stated that this motion was denied on the grounds that the sentence was not illegal since the sixty day period during which modification might be made had elapsed prior to the filing of the motion, and since a Federal sentence could not be made concurrent with a sentence which had already been served. [C. T. 5-6.]

V.
Summary of Argument.

A. The District Court did not violate its discretion in denying the petition without holding a hearing since the petition raised no factual issues upon which relief could be granted.

B. The District Court did not err in denying the petition based on a claim of lack of speedy trial since the appelant was indicted within the period of limitations, made no effort to speed the trial, did not object on this ground, and could show no prejudice.

C. The District Court did not err in denying the petition based on the claim that the appellant's State and Federal sentences should have run concurrently since a sentence cannot be concurrent with a period of time which anteceded its imposition and since the sentence imposed is a legal sentence.

VI.
Argument.

A. The District Court Did Not Violate Its Discretion in Denying the Petition Without Holding a Hearing Since the Petition Raised No Factual Issues Upon Which Relief Could Be Granted.

It is well established there is no requirement that the District Court hold a plenary hearing before ruling on a petition for a Writ of Habeas Corpus or a motion under Title 28, Section 2255 where there are no material facts in issue and only questions of law before the court which are capable of easy resolution.

Sanders v. United States, 373 U. S. 1 (1962);
Marchibroda v. United States, 368 U. S. 487 (1961);
Boyden v. Webb, 208 F. 2d 201 (9 Cir. 1953);
Craig v. Hunter, 167 F. 2d 721 (10 Cir. 1948).

In the instant case the District Court examined the original files in order to determine the relevant facts and stated these facts in the order denying the petition. [C. T. 4.] It might be noted that the appellant does not question this statement of the facts in his brief.

As will be shown in Sections B and C of the Argument, the uncontested facts before the District Court did not present any basis upon which relief could be granted.

Since there were only these questions of law before the District Court and no material facts in issue, the District Court did not violate its discretion in denying the petition without a hearing whether the petition is considered to be a motion under Section 2255 of Title 28 or a petition for habeas corpus. Therefore, the appellant's claim for relief should be denied.

B. The District Court Did Not Err in Denying the Petition Based on a Claim of Lack of Speedy Trial Since the Appellant Was Indicted Within the Period of Limitations, Made No Effort to Speed the Trial, Did Not Object on This Ground, and Could Show No Prejudice.

As the District Court stated in denying the petition:

> "The indictment was returned within the period of limitations and no effort is shown on the part of petitioner to speed trial or to object to prosecution on this ground, nor is prejudice shown to have resulted."

Under such circumstances it is obvious that the appellant's claim of violation of his Sixth Amendment

Rights cannot be sustained and the District Court ruled correctly.

Glenn v. United States, 303 F. 2d 536 (5 Cir. 1962);

United States v. Korge, 251 F. 2d 87 (2 Cir. 1958);

Morland v. United States, 193 F. 2d 297 (10 Cir. 1951);

D'Aquino v. United States, 192 F. 2d 338 (9 Cir. 1951).

C. The District Court Did Not Err in Denying the Petition Based on the Claim That the Appellant's State and Federal Sentences Should Have Run Concurrently Since a Sentence Cannot Be Concurrent With a Period of Time Which Anteceded Its Imposition and Since the Sentence Imposed Is a Legal Sentence.

The appellant's argument that his Federal and State sentences should have run concurrently cannot overcome the obvious obstacle that a sentence cannot be concurrent with a period of time which anteceded its imposition. *Godwin v. Looney,* 250 F. 2d 72, 74 (10 Cir. 1957). For this reason the trial court could not when it sentenced the appellant on January 2, 1962, have even *recommended* that his Federal sentences run concurrently with a State sentence from which the appellant had been released on parole on November 28, 1961, over a month prior to the sentencing in Federal Court.

It should also be noted that under Section 3568 of Title 18, United States Code, a sentence shall commence to run from the time when the defendant is received at the institution of confinement for service of sentence.

As the District Court stated the sentence imposed by the trial court is a legal sentence, within the maximum possible under Title 18, Section 2312 of the United States Code.

The District Court stated that it considered the appellant's pleadings to also constitute a motion for reduction of sentence and denied that motion. There was, of course, no alternative to such a ruling in view of the limitation imposed by Rule 35 that such a motion be made within sixty days after the imposition of sentence. Approximately a year had passed between the imposition of sentence and the date of the filing of the petition.

VII.

Conclusion.

Since the uncontested facts, as determined by the District Court after examination of the files, when coupled with the appellant's petition failed to present any basis upon which relief could be granted, the decision of the District Court should be affirmed.

Respectfully submitted,

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Certificate.

I certify that in connection with the preparation of this Brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion the foregoing brief is in full compliance with those rules.

ROBERT L. BROSIO
Assistant U. S. Attorney